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the devil ;" held actionable in *Day v. Buller*, 3 Wils. 59.

To say of a barrister : " He is a dunce and will get little by law ; he was never but accounted a dunce in the Middle Temple," is actionable : *Peard v. Jones* Cro. Car. 382.

To publish in writing of a barrister that he is a quack lawyer and mountebank and an imposter, is actionable : *Wakley v. Healy*, 7 C. B. 591.

An action lies for saying of an utterbarrister : " Thou art no lawyer ; thou canst not make a lease ; thou hast that degree without desert : they are fools that come to thee for law : " *Banks v. Allen*, 1 Roll. Abr. 54.

Where a man said of a counsellor at law : " Thou art a daffa-down-dilly," it was held actionable ; though there being an averment that these words signified that he was an ambidexter, the

charge was not simply of ignorance and incapacity : 1 Roll. Abr. 55.

The ignorance must, however, be charged in general terms, in order to render the words actionable *per se*. Thus it has been held not actionable *per se*, to say of an attorney in a particular suit : " He knows nothing about the suit ; he will lead you on until he has undone you : " *Foot v. Brown*, 8 John. 64 ; *Weeks on Attorneys*, § 139, and cases cited ; although, as stated in the principal case, quoting from Townshend on Slander & Libel, § 194, " it is said, however, that it is actionable to charge ignorance or unskilfulness, if it amounts to gross ignorance or unskilfulness. This seems only another mode of imputing such ignorance as unfits the person for the proper exercise of his art, or of misconduct therein."

MARSHALL D. EWELL.

United States Circuit Court, Southern District of New York.

J. NELSON TAPPAN, TRUSTEE, ETC., v. THEODORE W. WHITEMORE ET AL.

A debtor who had previously made a general assignment under a state insolvent law, paid a sum of money to a creditor. Subsequently, under proceedings in bankruptcy, a trustee for creditors was appointed, and on a bill filed by him, the assignment was set aside and the rights of the assignee vested in him. The trustee then, more than two years after his appointment, and after the payment had been made to the creditor, brought suit against the latter to recover the money paid, on the ground that at the time of payment it was the money of the assignee : *Held*, that the plaintiff could recover, as the cause of action had not accrued to him until the assignee's title had vested in him under the bill to set aside the assignment, and the statutory limitation had not therefore run at the time the suit was brought.

It would have been otherwise had the suit been brought merely on plaintiff's title as trustee in bankruptcy, to recover money paid in fraud of creditors or in contravention of the bankrupt act ; as in such case the cause of action would have accrued immediately on plaintiff's appointment as trustee.

ON demurrer. The case is sufficiently stated in the opinion.

Abbott Brothers, for plaintiff.

Edward B. Merrill, for defendants.

The opinion of the court was delivered by

WALLACE, J.—This case presents the single question whether upon the facts alleged in the complaint, which are admitted to be true, the defence of the statutory limitation of actions prescribed by section 5057 Revised Statutes of the United States, can prevail.

That section provides that “no suit, either at law or in equity, shall be maintainable in any court between an assignee in bankruptcy, and a person claiming an adverse interest touching any property or rights of property transferable to or vested in such assignee, unless brought within two years from the time when the cause of action accrued for or against such assignee.”

The complaint shows that the plaintiff was appointed and confirmed as trustee in bankruptcy of the estate of Archibald Baxter & Co., bankrupts, and as such trustee received an assignment of their estate on the 28th day of March 1876. On the 26th day of April 1878, the plaintiff brought the present suit to recover \$2500 paid by the bankrupts to the defendants on the 9th day of August 1875.

The complaint does not allege that the sum thus paid was paid in contravention of the bankrupt act, or in fraud of the creditors of Baxter & Co., but alleges that in fact the money belonged to one Dwight Johnson, to whom Baxter & Co. had made a general assignment of all their property, in trust for creditors, two days before the payment, and that when the defendants received the money they had knowledge of the assignment, and that the money belonged to Johnson.

Upon these facts it seems quite clear that the cause of action did not accrue to the plaintiff at the time when, as trustee, he received an assignment of the bankrupt's estate. He could not at that time have maintained an action against the defendant. Of course the bankrupts had no right of action to recover the money back, and the plaintiff, as trustee, acquired no better right than the bankrupts had, except as to property conveyed in fraud of creditors, or money or property transferred in contravention of the bankrupt act. The money which was received by the defendants was not the money of Baxter & Co., but that of Johnson, and no one except Johnson could have recovered it of the defendants.

Subsequently the plaintiff became vested with the cause of action. As appears by the complaint, he filed a bill to set aside the general assignment from Baxter & Co. to Johnson as a transfer in

contravention of the bankrupt act, and as void as to the plaintiff, because made with a view to prevent the property of the assignors from being distributed under the bankrupt act. And on the 15th day of May 1877, a decree was rendered in that action, setting aside the assignment as to the plaintiff. By force of this decree, and a transfer made in obedience to it, all the property and rights of action which had passed to Johnson under the general assignment became vested in the plaintiff. Then, and not until then, the plaintiff was in position to maintain an action against defendants for the money, which, under the assignment belonged to Johnson, but which the defendants had received without authority from Johnson. Then, and not until then, the cause of action accrued for the trustee. The statute begins to run only from the time when the assignee has a cause of action upon which he can bring suit. It is a statute to enforce vigilance and promptitude on the part of the assignee, and neither its language nor the object it is designed to effect, authorizes a construction which might deprive an assignee from enforcing a claim because two years may have elapsed before he has become vested with the right of action. If, in the present case, the trustee had failed without any fault or want of diligence on his part to obtain the decree setting aside the assignment until two years had elapsed, under the construction claimed by the defendants, he could not have maintained an action but would have been met and defeated by the statutory bar.

Thus he would be barred of his action although he never had a cause of action. This surely cannot be the intent of the statute. While the cause of action arose when the money was received by the defendants it did not accrue to the trustee until he could avail himself of it.

If it had appeared that Baxter & Co. paid the money to the defendants in contravention of the bankrupt act, or in fraud of the creditors, a different result would follow, because in such a case the plaintiff could have maintained an action against the defendants as soon as he was appointed trustee, and received an assignment of the bankrupt's estate, and Johnson's title to the money would not have stood in his way. In such a case the plaintiff would not have derived title through Johnson or through the assignment, but through the statute, which invested him with the right of action to recover all property conveyed by the bankrupt in fraud of his creditors or in fraud of the provisions of the bankrupt act (sections 5046, 5128,

Rev. Statutes U. S.), and the defendants could not have interposed the assignment, and Johnson's title under it, as a defence, because as against the assignment was void.

Undoubtedly, when the assignment was set aside at the suit of the trustee in bankruptcy, the title of the trustee related back to the time of the assignment. But the doctrine of relation is never applied to defeat a remedy, and cannot be invoked to subject the plaintiff to a disability which otherwise would not exist.

Judgment is ordered for the plaintiff.

Supreme Court of Indiana.

FRANK HAUSMAN v. A. T. NYE ET AL.

Where one purchases a number of articles at one time and by the same contract, he is not obliged to accept any unless all be delivered.

A delivery to a common carrier, not selected or designated by the purchaser, is not such a delivery or acceptance of goods as will take the contract out of the Statute of Frauds.

Whether such a delivery, in the case of a contract valid in itself, might be sufficient to transfer the title and risk to the purchaser, *quære*.

ON error to Daviess Circuit Court.

This was an action for the price of a number of stoves, purchased by defendant, but which he refused to receive, on the ground that his whole order was not filled. The court below gave judgment for the plaintiff. The facts sufficiently appear in the opinion.

Mason & Bynum and Burns & Burns, for appellant.

Gardiner & Armstrong, for appellees.

The opinion of the court was delivered by

PERKINS, J.—The contract in the case between the plaintiff and the defendant, embraced all the articles in the bill of particulars sued on and others in addition. One of the plaintiffs in his testimony said: "I shipped the goods, as per Mr. Hausman's order, to Scott, with the exception of three number seven Charm heating stoves, which we could not at that time ship, as they were not then on hand." The defendant below, Hausman, in his testimony stated that "he ordered other goods at the same time, viz.: ordered three number seven Charm heating stoves but they did not come. I ordered all these goods at one time, and would